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6 *Attorney for the Randolph Residents*

7 **BEFORE THE ARIZONA CORPORATION COMMISSION**

8 IN THE MATTER OF THE) DOCKET NO. L-00000B-21-0393-00197
9 APPLICATION OF SALT RIVER)
10 PROJECT AGRICULTURAL)
11 IMPROVEMENT AND POWER)
12 DISTRICT, IN CONFORMANCE WITH)
13 THE REQUIREMENTS OF ARIZONA)
14 REVISED STATUTES, SECTIONS 40-)
15 360, ET SEQ., FOR A CERTIFICATE OF)
16 ENVIRONMENTAL COMPATIBILITY)
17 AUTHORIZING THE EXPANSION OF) RANDOLPH RESIDENTS' OPEN
18 THE COOLIDGE GENERATING) MEETING COMPLAINT
19 STATION, ALL WITHIN THE CITY OF)
20 COOLIDGE, PINAL COUNTY,)
21 ARIZONA.)

22 At the Arizona Corporation Commission's ("ACC") open meeting on January 25,
23 2023, the ACC allowed Salt River Project ("SRP") to speak regarding SRP's application
24 for a Certificate of Environmental Compatibility ("CEC") for the proposed Coolidge
25 Expansion Project ("Project") and voted to direct the Legal Division to further discuss the
26 proposed Project with SRP, without providing other parties to the CEC proceeding with
27 adequate notice or an opportunity to be heard. This violated Arizona's Open Meeting Law.
28 The Randolph residents request that the ACC hold a new, properly noticed vote on this
matter and provide an opportunity for the residents and all interested parties to be heard.

1 1. Background

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3 SRP applied for a CEC for the Project in 2021 in Docket No. L-00000B-21-0393-
4 00197. A group of Randolph residents were parties to the CEC proceeding before the
5 Arizona Power Plant and Transmission Line Siting Committee (“Committee”) in 2022.
6 Randolph residents testified as witnesses at the Committee hearings about the Project’s
7 impacts on their community, and many residents showed up to observe the hearings and
8 give public testimony. After the Committee voted to grant the CEC, the Randolph residents
9 petitioned the ACC for review and actively participated in each stage of the proceeding.
10 Many Randolph residents drove long distances to attend each ACC meeting where the
11 Project was discussed.

12 The ACC rejected SRP’s CEC application for the Project in Decision No. 78545,
13 dated April 28, 2022. SRP filed a request for rehearing and reconsideration on May 16,
14 2022, but the ACC voted to deny rehearing on June 6, 2022. On July 6, 2022, SRP filed
15 suit against the ACC in Maricopa County Superior Court challenging the denial of the
16 CEC. The Randolph residents intervened in that lawsuit to support the ACC’s decision.
17 Randolph residents filled the courtroom to watch the trial in January. On January 18, 2023,
18 the Court issued a ruling upholding the ACC’s decision to deny the CEC for the Project.
19

20 2. The Coolidge discussion at the January 25, 2023 meeting was not properly noticed.

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22 The agenda for the ACC’s January 25, 2023 meeting indicated that the ACC would
23 hear an update on the lawsuit challenging the ACC’s denial of the CEC for the Project. The
24 agenda described an “[u]pdate from the Legal Division Regarding the Court’s January 18,
25 2023 Ruling and Commission Discussion, Consideration, and Possible Vote Regarding
26 Next Steps.” The agenda did not say that the ACC would discuss or vote on reopening or
27 reconsideration of the April 28, 2022 decision to deny the CEC for the Project, or that the
28 ACC would consider voting to initiate negotiations with SRP, or that the ACC would hear

1 public comments or provide an opportunity for parties to the CEC proceeding to be heard.

2 At the January 25 open meeting, before the executive session on this item, the ACC
3 invited an SRP representative to speak. The SRP representative asked the ACC to
4 reconsider its denial of the CEC for the Project, repeating some of the arguments from
5 SRP's CEC application and request for rehearing, and said that SRP would be willing to
6 consider additional mitigation measures for the Project. The ACC did not provide an
7 opportunity for other parties to the CEC proceeding to be heard. The ACC then entered an
8 executive session. After the executive session, the ACC initially discussed a proposed
9 motion "regarding the SRP rehearing application." On the advice of the Legal Division,
10 the ACC then reframed the motion as one to "instruct the Legal Division to enter into
11 discussions with SRP regarding the Court's decision." That motion passed 5-0.

12 3. The inadequate notice of the Coolidge CEC discussion violated the Open Meeting Law.

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14 The Open Meeting Law requires that matters considered at public meetings must
15 be listed on the agenda for the meeting, and that public bodies may only discuss,
16 consider, or vote on matters that were listed on the agenda. A.R.S. § 38-431.02(H).
17 Parties to ACC proceedings must be provided notice and a meaningful opportunity to be
18 heard. *Wales v. Arizona Corp. Comm'n*, 249 Ariz. 263, 267 (App. 2020). Parties must
19 have notice and an opportunity to be heard before the ACC can rescind or amend a
20 previous decision. *Gibbons v. Arizona Corp. Comm'n*, 95 Ariz. 343, 346-47 (1964).

21 The ACC's consideration of SRP's renewed request for reconsideration of the
22 CEC at the January 25, 2023 meeting was not noticed on the agenda, and violated the
23 Open Meeting Law. It was improper for the ACC to hear comments from SRP on the
24 CEC application for the Project without giving other parties to the CEC proceeding
25 notice and an opportunity to be heard. Because of this inadequate notice, the Randolph
26 residents were denied an opportunity to be heard. If the item had been properly noticed
27 on the agenda, the Randolph residents would have appeared at the meeting and requested
28 to speak. The residents are entitled to a meaningful opportunity to be heard.

1 Where an action taken at a public meeting violates the Open Meeting Law, that
2 action is "null and void" unless the body cures the violation. A.R.S. § 38-431.05(A). The
3 ACC's vote to direct the Legal Division to engage in "discussions" with SRP about the
4 Project is null and void, because it was taken in violation of the Open Meeting Law.

5 To cure the violation, the ACC must hold a properly noticed vote to ratify the
6 action within 30 days, after giving all interested parties an opportunity to be heard.
7 A.R.S. § 38-431.05(B). The Randolph residents request that the ACC hold a new,
8 properly noticed vote on this matter and provide an opportunity for the residents and all
9 interested parties to be heard.

10 **RESPECTFULLY SUBMITTED** this 31st day of January, 2023.

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2 **Original e-filed on this 31st day of January, 2023 with:**

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7 *I hereby certify that I have this day served a copy of the foregoing document on all parties of
8 record in this proceeding by regular or electronic mail to:*

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